

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PHOTOMEDEX, INC.,
Plaintiff,

v.

ST. PAUL FIRE & MARINE INS. CO.,
Defendant.

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:
:
: CIVIL ACTION
:
: NO. 09-00896
:

Order

AND NOW this 28th day of July 2009, upon consideration of defendant St. Paul's motion to dismiss and/or stay this action (Doc. No. 5), plaintiff PhotoMedex's motion for partial summary judgment (Doc. No. 7), defendant's request to transfer this action, and the parties' responses to the respective motions and requests, **IT IS HEREBY ORDERED** that:

1. Defendant's motion to dismiss is **DENIED**.
2. Defendants motion to stay is **GRANTED** as to plaintiff's breach of contract claim contained in count II of the complaint and **DENIED** as to plaintiffs' request for a declaratory judgment.
3. Defendant's request to transfer venue is **DENIED**.
4. Plaintiff's motion for partial summary judgment is **GRANTED** and judgment is **ENTERED** in favor of PhotoMedex and against St. Paul to the extent that Pennsylvania substantive law controls the coverage disputes for the insurance policy.

It is **HEREBY DECLARED** that:

1. Pennsylvania law applies to the interpretation of the insurance policy issued by St. Paul to PhotoMedex bearing the policy number TE06401644.
2. Under Pennsylvania law, the insurance policy imposes a duty upon St. Paul to indemnify PhotoMedex for losses arising from malicious prosecution claims filed against PhotoMedex.

3. Pennsylvania law controls the attorney fees and costs that St. Paul must pay to PhotoMedex under the insurance policy for counsel PhotoMedex selects to it in malicious prosecution actions.

These declarations are without prejudice to the right of St. Paul to defend in the California action on the basis of the scope of the Settlement Agreement.

s/ William H. Yohn Jr., Judge
William H. Yohn Jr., Judge